United Nations A/61/65

General Assembly

Distr.: General
20 March 2006

Original: English

Sixty-first session
Item 69 (a) of the preliminary list*
Oceans and the law of the sea

Report of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

Transmittal letter dated 9 March 2006 from the Co-Chairpersons of the Working Group to the President of the General Assembly

Pursuant to General Assembly resolution 60/30, we were appointed Co-Chairpersons of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, established pursuant to paragraph 73 of General Assembly resolution 59/24.

We have the honour to transmit the report of the Working Group on its meeting at United Nations Headquarters from 13 to 17 February 2006. The report takes the form of the Co-Chairpersons summary of discussions of the various agenda items (for the agenda, see annex V). A summary of trends prepared by the Co-Chairpersons, representing our general understanding of the issues, possible options and approaches that emerged from the meeting, is contained in annex I. A list of specific studies suggested by delegations is contained in annex II; the list should be read in conjunction with the summary of discussions.

We request that the present letter and the report be circulated as a document of the sixty-first session of the General Assembly under item 69 (a) of the preliminary list, in accordance with paragraph 76 of resolution 59/24, in which the Assembly recognized the importance of making the outcomes of the Working Group widely available.

(*Signed*) Juan Manuel **Gómez-Robledo**
and Philip D. **Burgess**

* A/61/50 and Corr.1.

06-27750 (E) 050506

Report of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

Co-Chairpersons summary of discussions

Agenda item 1
Opening of the meeting

1. The meeting of the Ad Hoc Open-ended Informal Working Group established by the General Assembly (see General Assembly resolution 59/24, para. 73) to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction had before it the report of the Secretary-General (A/60/63/Add.1), which had been prepared in response to the request contained in paragraph 74 of Assembly resolution 59/24. Also, in conformity with paragraph 74 of the same resolution, the meeting was convened in New York within six months of the release of the report from 13 to 17 February 2006. The meeting was attended by States Members of the United Nations, parties to the United Nations Convention on the Law of the Sea and observers, including global and regional intergovernmental organizations, organizations and bodies of the United Nations system and non-governmental organizations, in accordance with previous practice.

2. At the opening of the meeting, the Director of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, delivered a statement on behalf of the Legal Counsel, Under-Secretary-General for Legal Affairs, recounting the process that had led to the establishment of the Working Group and recalling the mandate bestowed upon it by the General Assembly. The Director introduced the report of the Secretary-General, emphasizing the importance of a deep understanding of all relevant scientific, socio-economic and environmental aspects of biodiversity to ensure a productive discussion. He also underlined the central role of the United Nations Convention on the Law of the Sea and of the Assembly with regard to wide-ranging and cross-cutting issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

Agenda items 2 and 3
Adoption of the agenda
Organization of work

3. In their introductory statements, the Co-Chairpersons reflected on the purpose of the Working Group, as well as on the challenges it faced. In particular, they highlighted the unique opportunity that the Working Group offered to promote cooperation and coordination in the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In recalling the recent work of the General Assembly and other bodies in that area, the Co-Chairpersons reminded delegations that the Working Group provided an ideal opportunity for studying a wide range of issues in an integrated manner. The Co-Chairpersons presented the format, provisional agenda and programme of work of the meeting, which had been circulated earlier to delegations in a letter signed by them dated

20 January 2006 (see annex III). The meeting adopted the provisional agenda and programme of work without amendments.

Agenda item 4
General exchange of views

4. Under agenda item 4, delegations were invited to deliver their general statements. They reiterated the view that the 1982 United Nations Convention on the Law of the Sea established the legal framework within which all activities in the ocean, including in areas beyond national jurisdiction, should be carried out.

5. Delegations expressed their appreciation to the Secretary-General and the staff of the Division for Ocean Affairs and the Law of the Sea for the report prepared in accordance with paragraph 74 of General Assembly resolution 59/24. In particular, they commended the comprehensive nature of the report and the contribution it made to a fruitful discussion within the Working Group. It was noted that the report referred to various options and approaches regarding the promotion of international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Delegations concurred with the conclusion in the report that the time had come for the international community to address in greater depth and to clarify, if necessary, various complex issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, in the light of the general principles under the Convention. Nevertheless, one delegation emphasized that discussions on the issues should not overshadow the fact that various activities posed serious threats to marine ecosystems that contain the largest proportion of marine living resources in areas within national jurisdiction. It was emphasized that the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction should be approached through integrated ocean management. In this regard, the establishment of the Working Group offered a unique opportunity for the international community to study such issues in an integrated and comprehensive manner.

6. Delegations welcomed the decision of the General Assembly to establish the Working Group, emphasizing that the opportunity to address marine biological diversity beyond areas of national jurisdiction in such a forum was an historic one. In particular, the broad mandate of the Working Group made it possible to examine all the issues relating to marine biological diversity, instead of focusing only on some of its aspects. Most delegations emphasized the importance and complexity of the topic under review, which highlighted the geographical magnitude of the oceans, their biological significance and the fragility of ecosystems beyond areas of national jurisdiction, as well as the interlinkages between those systems and terrestrial ones. It was further emphasized that although little is known about these aspects, scientific studies consistently showed an alarming decrease in biological diversity in all areas of the ocean, whether within areas of national jurisdiction or beyond them. Delegations also noted the high economic importance of marine ecosystem goods and services and thus the importance of conserving and managing them in a sustainable manner.

7. The General Assembly was generally considered to be the appropriate forum for addressing marine biological diversity beyond areas of national jurisdiction, owing to its role as the global forum with competence to deal comprehensively with

complex, multidisciplinary issues. Delegations expressed particular appreciation for the informal nature of the Working Group, which encouraged an open and productive discussion. Many delegations hoped that the meeting would be only the first of a series of meetings to be held either by the Working Group, in its current format or in any other format decided upon by the General Assembly.

8. Views were expressed on the mandate of the Working Group and on the need to agree on a focused agenda and on priority issues for consideration. Desired outcomes for the meeting were described, including preferred options for enhancing the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

Agenda item 5
Consideration of issues identified in General Assembly resolution 59/24, paragraph 73

Agenda item 5 (a)
Past and present activities of the United Nations and other relevant international organizations, with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

9. Delegations were invited to comment on and/or provide an update on the activities of relevant international organizations which had not already been included in the comprehensive overview of activities contained in the report of the Secretary-General (A/60/63/Add.1). Delegations provided updates on the recent work of the Committee on Fisheries of the Food and Agriculture Organization of the United Nations (FAO), the Convention on the Conservation of Antarctic Marine Living Resources, and the Asia-Pacific Economic Cooperation. The role and importance of regional fisheries management organizations in managing high seas fisheries was highlighted, as was the need for enhancing cooperation among them and for continued support of the efforts under way to strengthen their mandates. In this regard, they noted the upcoming work of the General Assembly on sustainable fisheries, pursuant to resolutions 59/25 and 60/31. The outcomes of the Conference on the Governance of High Seas Fisheries and the United Nations Fish Agreement and of the First International Marine Protected Areas Congress were also provided. A progress report was submitted to the Working Group on the meeting being held in Wellington from 14 to 17 February 2006 on negotiations for a new South Pacific regional fisheries management organization. Delegations noted that the review of activities of relevant organizations contained in the report of the Secretary-General confirmed that there was an urgent need to effectively implement existing measures within the relevant institutions. It was also noted in this context that existing mechanisms and institutions needed to apply a multisectoral and integrated approach to management and cooperate and coordinate to that end, thus moving away from their current sectoral approach. A view was expressed that transparent decision-making should be encouraged in regional and global organizations, which should be strengthened and subject to performance review.

10. A number of representatives provided additional information on the activities of their organizations.

11. The Secretary-General of the International Seabed Authority elaborated on various aspects of the Authority's activities relating to marine biological diversity,

including environmental protection and marine scientific research, carried out in conformity with the mandate of the United Nations Convention on the Law of the Sea and of the Agreement relating to the implementation of part XI of the Convention. In particular, the Secretary-General of the International Seabed Authority announced the establishment by the Authority of a trust fund to promote marine scientific research and to provide opportunities for scientists from institutions in developing countries to participate in research activities conducted by international scientists at sea or in the laboratories of scientific institutions. A detailed proposal on the establishment of the voluntary trust fund and the programme for training will be submitted for consideration at the twelfth session of the Authority, in 2006.

12. A representative of the International Union for the Conservation of Nature and Natural Resources informed the Working Group that the organization had been working with numerous partners (for example, the High Seas Task Force on illegal, unreported and unregulated fishing, the Convention on Biological Diversity, and the Convention on the Conservation of Antarctic Marine Living Resources) to draw attention to ongoing scientific research findings on the state of marine biodiversity beyond areas of national jurisdiction and the threats to it, as well as to develop a number of policy recommendations.

13. A representative of the United Nations Environment Programme provided information on relevant scientific and environmental aspects and informed delegations of the work of the organization in the context of major international ocean programmes.

14. The Secretariat of the Convention on Biological Diversity provided an update on the relevant work that had been carried out in the context of the Convention on Biological Diversity following the publication of the report of the Secretary-General. The first meeting of the Ad Hoc Open-ended Working Group on Protected Areas of the Convention on Biological Diversity was held from 13 to 17 June 2005 in Montecatini, Italy, and put forward recommendations that will be considered at the 8th meeting of the Conference of the Parties to the Convention on Biological Diversity (March 2006, Brazil). At its 8th meeting, the Conference of the Parties will also discuss the issue of deep seabed genetic resources, on the basis of recommendation XI/8, which was adopted by the 11th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention on Biological Diversity Conference of the Parties in December 2005.

15. A number of delegations expressed their concern that FAO was not represented at the meeting, noting the particular importance of sustainable fisheries management, and the work of FAO to address marine biodiversity beyond areas of national jurisdiction.

Agenda item 5 (b)
Scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

16. The debate on the scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction generated a broad range of questions, observations and suggestions. The questions, raised by the

Co-Chairpersons and the delegations, were intended to develop a common understanding of the mandate of the Working Group and to highlight the issues that should be the focus of discussions under agenda item 5 (b). The discussions covered a broad range of issues from conceptual points to practical suggestions for specific measures.

Scientific and technical aspects

17. Considerable attention was devoted to the scientific aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The complexity of the issue was compounded by ongoing scientific discoveries, the development of new technologies and the lack of legal certainty on some key aspects.

18. At the outset, delegations agreed that research played a fundamental role with regard to the conservation and management of marine biological diversity and that knowledge about the marine biodiversity beyond areas of national jurisdiction remained insufficient. While acknowledging the importance of the studies conducted to date, several delegations advocated further scientific studies as a precondition for a meaningful examination of the topic of biodiversity and in order to better understand the complexities of marine biodiversity, in particular seamounts, hydrothermal vents, cold-water coral reefs and other sensitive underwater features. The important role of new technologies was highlighted in reference to their potential to enhance knowledge about deep-sea ecosystems and to contribute to the conservation of the ecosystems. Although available scientific information showed an accelerated loss of biological diversity, delegations emphasized that too little was known about the issue. In general, delegations considered that it was essential to build a stronger scientific basis on marine biological diversity beyond areas of national jurisdiction in order to facilitate the adoption and implementation of improved sustainable management and conservation measures of those marine resources. In this regard, since systematic observations were considered essential to acquire basic information, it was also considered important to support long-term observation systems, which monitored the deep-sea floor and associated biological communities, including the ones undertaken by the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Others noted that although more research would be welcome, enough information was already available for making immediate and necessary policy and management decisions, including on the basis of the precautionary approach.

19. Referring to the gaps in knowledge about climate change and the uncertainty of future models, some delegations called for a better understanding of the interaction between ocean and climate, in particular ocean temperatures and their effect on the marine environment, fish stocks and biodiversity. It was recognized that such studies required additional resources, both financial and technological, and entailed the development of involvement by States, in particular small island developing States.

20. Delegations recognized the need for increased capacity-building programmes, through training, sharing of data and information, as well as transfer of technology to support developing countries in the management, sustainable use and conservation of resources and biodiversity beyond areas of national jurisdiction. It

was noted that the Convention provided for capacity-building and the transfer of technology to developing countries and that its relevant provisions should be better implemented.

21. To illustrate some of the ongoing research activities, scientific cooperation projects, and the use of new technologies for the exploration of biological diversity, presentations were made by Barbara Moore, National Oceanic and Atmospheric Administration, United States of America; Elva Escobar Briones, National Autonomous University, Mexico; and by Kazuhiro Kitazawa, Japan Marine Science and Technology Centre, Japan. In addition, a non-governmental organization representative highlighted the recommendations of the conference, on the theme "Defying ocean's end".

Legal and institutional aspects

22. Regarding legal aspects, most delegations re-emphasized that the Convention provided the legal framework for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In this regard, some delegations stated that, in conformity with the Convention, the coastal State was fully entitled to adopt any conservation and management measures it deemed necessary to protect its sedentary species on the continental shelf. Those may include the possibility of imposing restrictive measures on fishing activities in the high seas over its continental shelf, including on fishing practices that were deemed to have a negative impact on sedentary species.

23. Some delegations reaffirmed that under existing international instruments there was a set of generally accepted principles, which may provide the ground to build global consensus for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Those principles included those embodied in the Convention and the 1992 Rio Declaration on Environment and Development. Delegations also noted the complementary role of other instruments, such as the Convention on Biological Diversity. It was pointed out that although that Convention was complementary to the United Nations Convention on the Law of the Sea, its jurisdictional scope did not extend to the conservation and sustainable use of components of marine biological diversity beyond areas of national jurisdiction since it applied only to processes and activities carried out under the control of States in those areas. This implied that certain provisions of the Convention on Biological Diversity were applicable, such as the obligation to identify and monitor processes and activities that were likely to have significant adverse impacts, and the need for environmental impact assessments, research and training. In considering the need for the management, conservation and sustainable use of marine biological diversity in an integrated manner, other delegations highlighted the role played by international organizations such as the International Maritime Organization (IMO), FAO, regional fisheries management organizations and regional seas conventions.

24. With regard to fisheries, some delegations noted that destructive fishing practices and illegal, unreported and unregulated fishing should be addressed in the context of the United Nations Fish Agreement, FAO instruments and regional fisheries management organizations since these instruments and organizations provided for measures to deal with all issues related to fisheries management, enforcement and monitoring measures and trade. Concern was expressed by a few delegations that some measures adopted by regional fisheries management

organizations in respect of the high seas established restrictions on States that were not parties to these organizations, in breach of the principle of general international law which states that an agreement between States cannot benefit or harm third States without their consent.

25. Some delegations were sceptical that existing regional fisheries management organizations had the capability or competence to tackle relevant issues, including bottom trawling and other destructive fishing practices, or to adopt holistic approaches in their management of fisheries since many of them were single-species management organizations. In that connection, some delegations noted that existing mechanisms provided only sectoral governance structures and that there were no clear mechanisms or a set of policy approaches in place to foster cooperation and coordination in a way that could effectively tackle the problem of conserving certain sensitive marine ecosystems. Some delegations suggested that this gap could be addressed through the adoption of an implementing agreement to the United Nations Convention on the Law of the Sea. Other delegations were of the view that there was no need for new institutions and legal frameworks to be devised for specific problems and vulnerabilities.

26. A number of non-governmental organizations called for an interim prohibition of high-seas bottom trawling, on the basis of the precautionary principle, while governance and management measures for areas beyond national jurisdiction were being negotiated. One non-governmental organization noted the highly endangered status of some species of turtles and called for a moratorium of longline fishing in particular areas in the Pacific Ocean.

27. A number of delegations pointed out that if marine scientific research were not conducted with due care, or were carried out in an intrusive manner, it could itself have adverse impacts on biodiversity. In this regard, it was stressed that marine scientific research should be conducted in conformity with the Convention provisions on the protection and preservation of the marine environment. Some delegations cautioned against trying to impose restrictions on the freedom of marine scientific research. They recalled the principle of the Convention dealing with the freedom of marine scientific research on the high seas and noted that undue regulatory mechanisms would only inhibit the work of the scientific community and impose difficulties on it. They favoured self-regulatory codes of conduct to be adopted by the scientific community over international rules on scientific activities. The work being conducted by the organization InterRidge was cited as a good example of the scientific community's commitment to responsible research practices. In addition, delegations argued that the importance of marine genetic resources for medical, scientific and industrial use warranted the fullest use of information and knowledge gained from both marine scientific research and marine genetic resources.

28. A number of other delegations emphasized that marine scientific research should be conducted in conformity with the provisions contained in part XIII of the Convention, in particular article 240 on general principles for the conduct of marine scientific research and article 241, which provided that marine scientific research activities shall not constitute the legal basis of any claim to any part of the environment and its resources. In addition, the delegations noted that article 143 provided that activities carried out in the Area should be conducted for peaceful purposes and for the benefit of mankind as a whole and noted that the International

Seabed Authority had a central role in collecting and disseminating information on marine scientific research on the seabed.

29. In addition, a number of delegations stated that, in accordance with their understanding of the principle of the common heritage of mankind, access to genetic resources in the deep seabed beyond areas of national jurisdiction should be, in principle, like the mineral resources in the Area, subject to the sharing of benefits based on consideration of equity. To emphasize this point of view, they noted the symbiotic relationship that genetic resources had with non-living marine resources and other living resources in the surrounding water column. They contended that a regulatory mechanism, including the adoption of improved norms and/or an implementing agreement to the Convention, may become necessary to clarify such matters as the relationship between marine scientific research and bioprospecting. A regulatory mechanism could also address the question of access to those resources and legal options for benefit-sharing, including non-monetary benefits, international cooperation in marine scientific research through the exchange, sharing and dissemination of information on research programmes, their objectives and results, and cooperation in the transfer of technology. The mandate of the Authority, which currently covered the protection of the marine environment, including biodiversity, under article 145 of the United Nations Convention on the Law of the Sea, could potentially be expanded to deal with all issues relating to deep-sea biodiversity, including genetic resources. In this regard, an objection was expressed to any provisions purporting to grant free access or unrestricted freedom of exploitation of genetic resources beyond areas of national jurisdiction. Several delegations referred to bioprospecting, calling for a definition of both marine scientific research and of bioprospecting. Others were of the idea that it was not necessary to differentiate between the two activities. Any development of a regulatory framework should not be developed in isolation from wider provisions for the conservation and sustainable use of marine biodiversity.

30. Referring to the legal status of genetic resources, a view was expressed that any measures that may be taken in areas beyond national jurisdiction must be consistent with international law, including the freedom of navigation and of marine scientific research. Some delegations stated that the resources were covered by the regime of the high seas, under part VII of the Convention. They argued that there was no legal gap with respect to living resources in areas beyond national jurisdiction and that the freedoms of the high seas were applicable to activities relating to marine genetic resources. On this basis, they did not see the need for a new regime to address the exploitation of marine genetic resources in areas beyond national jurisdiction or to expand the mandate of the International Seabed Authority.

31. Other delegations were of the view that clarification was needed with regard to the legal status of genetic resources in the seabed and subsoil beyond areas of national jurisdiction.

Environmental aspects

32. It was highlighted that oceans were to be viewed as an integrated ecosystem and a critical component of the Earth's regulatory system. At the same time, many delegations noted the serious impacts on oceans from a range of anthropogenic activities.

33. Delegations identified illegal, unreported and unregulated fishing and destructive fishing practices as the greatest threats to marine biodiversity beyond areas of national jurisdiction. However, it was recognized that other growing human pressures, including from ocean noise and dumping, required urgent action through international cooperation and coordination. In this regard, the precautionary and ecosystem-based approaches were considered fundamental principles, which had received wide acceptance within the international community. Many delegations acknowledged that the international community needed to take action to close both the implementation and governance gaps regarding these principles. Recalling that scientific uncertainty continued to be prevalent in many areas regarding deep-ocean biological diversity, it was argued that such uncertainty warranted the application of a precautionary approach in decision-making processes. It was also cautioned that a lack of comprehensive understanding of marine biological diversity and of conclusive scientific research should not lead to delays in the adoption of cost-effective measures aimed at preventing further loss of marine biological diversity. This implied a call to take proactive, rather than reactive, measures, based on the best available scientific information. With regard to the ecosystem approach, delegations pointed out that its implementation required a holistic approach to management rather than one focused on specific sectors, such as fisheries. Such an approach could be based on multiple-use protected areas for vulnerable and unique habitats.

34. It was also stated that environmental management tools should be more widely used in the management of marine resources beyond areas of national jurisdiction, including the use of environmental impact assessments.

35. Delegations provided suggestions for actions and/or studies to be conducted by the international community, including the need for a process to evaluate the features of particular ecosystems that were put at risk by specific activities and for a process to assess the effectiveness of tools to mitigate the impacts of those activities. The need for objective criteria to identify and establish areas requiring protection, such as marine protected areas or other area-based management, was raised by many delegations. It was reported that a compilation of ecological and biological criteria for the identification of marine protected areas was being developed, on the basis of the recommendations of the first meeting of the Ad Hoc Working Group on Protected Areas of the Conference of the Conference of the Parties to the Convention on Biological Diversity. Several delegations also stressed the need for further study of the connections between climate change, the increased vulnerability of marine species and ecosystems and the need for urgent action.

Economic and socio-economic aspects

36. Regarding economic and socio-economic aspects, it was pointed out that sustainability was inextricably linked to the conservation of marine biodiversity and that achieving sustainable use and exploitation of marine resources called for further studies and greater understanding of conservation, use and impacts. It was proposed that the value of marine ecosystems and resources be further studied and taken into account in policy and decision-making. It was noted that the economic benefits derived from the protection and use of marine biological diversity beyond areas of national jurisdiction needed further study. A delegation also highlighted the lack of public awareness owing to the insufficient attention given to efforts to mobilize

people at the grass-roots level to understand the issue of conservation and sustainable use of marine resources.

37. A delegation emphasized that the conservation of biodiversity should be an integral part of social and economic development and suggested using economic incentives to improve sustainable utilization of marine biodiversity since its loss could limit the socio-economic benefits for developing countries. The question of perverse incentives and profit from illegal, unreported and unregulated fishing was also raised.

Agenda item 5 (c)
Key issues and questions where more detailed background studies would facilitate consideration by States of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

38. Expanding upon some of the issues that had been identified under previous agenda items, delegations made several suggestions regarding key issues and areas that needed further study by the international community. Many delegations stated their willingness to participate in furthering cooperation and coordination in relation to the issues of conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In this regard, a number of delegations emphasized that a study of the level of cooperation and coordination among organizations and bodies within and outside the United Nations system, as well as cooperation among States at the multilateral, regional and bilateral levels, should be a necessary component of further studies. The degree to which existing information was shared should also be assessed.

39. A list of the studies suggested by various delegations is contained in annex II of the present report. A number of delegations noted that there was already considerable work under way in relation to many of the suggested studies and that the suggestions for further studies would need to be refined and assessed by the General Assembly to take into account that work.

40. Following the views expressed on key aspects of the conservation and sustainable use of marine biological diversity, some delegations called for comprehensive studies on the existing legal framework to identify relevant common principles for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, including those relating to the genetic resources of the seabed beyond areas of national jurisdiction. Some delegations suggested consideration of the current governance and management framework to identify best practices and to ascertain whether new institutions were required. In this regard, some delegations drew attention to the work of multilateral environmental agreements on the conservation of marine biodiversity in the high seas, such as the work governed by the Convention on the Conservation of Migratory Species of Wild Animals and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

41. Several delegations highlighted the importance of consolidating information and harmonizing and standardizing information in a way that assisted informed decision-making and that was policy relevant. Some delegations underlined that further studies were needed on existing threats to marine biodiversity and on available tools to address those threats, both within and outside the scope of the current legal regime. The need for studies regarding current measures and actions

taken by States and researchers to manage the environmental impacts of scientific research in the deep seabed was also noted.

42. It was stressed that greater effort, in both technological and financial terms, was required in order to document information on biodiversity and the environmental conditions of the bathypelagic zone, trenches and seamounts. In this regard, targeted technologies and environmentally sound sampling techniques were needed. The need was also raised for further study of cold-water and deep-water coral ecosystems, including those associated with seamounts, so as to better further understand their reproduction, recruitment and resilience to human impacts. The need to initiate and continue long-term time-series studies of marine biodiversity beyond areas of national jurisdiction, with a view to evaluating natural variability, climate change impacts and understanding of the resilience of deep-sea ecosystems to the impacts of anthropogenic stresses through enrichment projects, was also underlined.

43. Some delegations proposed studies on ways marine scientific research could be conducted to foster increased participation by developing countries. A number of delegations stated that developed States and relevant international organizations and financial institutions, through bilateral, regional or global cooperation programmes and technical partnerships, could better support capacity-building of developing countries in deep-sea scientific research. It was noted that information-sharing was of particular importance in this regard, including through the establishment of additional databases made available to scientists from developing countries and, where necessary, the consolidation of different data models and formats by competent international forums. Technology transfer, on fair and reasonable terms and conditions, and wider and more effective participation of developing countries in global ocean management were also highlighted. Several delegations stressed the need to gather information that could provide a basis for improving capacity-building for the conservation and sustainable use of marine biodiversity. One suggestion for learning more about the questions and opportunities and gaps in science and technological capacity was to use a questionnaire to identify possible training opportunities and the current needs of developing countries.

44. Many delegations expressed the need for a common understanding and definition of the ecosystem approach and for further work on the concept of marine protected areas beyond areas of national jurisdiction. In this regard, several studies were suggested to clarify a number of issues concerning marine protected areas or area-based management, including the type of ecological criteria that would apply; criteria that would assist in identifying priority areas; the management objectives of those areas, including management or restriction of certain types of activities; enforcement and compliance measures and temporal measures for protection; and possible regulations of activities outside marine protected areas. The Convention on Biological Diversity representative informed the meeting that data gaps had been highlighted at the first meeting of the Ad Hoc Working Group on Protected Areas of the Conference of Parties to the Convention on Biological Diversity (see UNEP/CBD/WG-PA/1/L.6, annex I, recommendation No. 1/1, para. 4 (h)).

45. In relation to fisheries, due consideration should be given to studying the reasons why existing relevant instruments had not been adequately implemented, with a view to developing strategies and modalities to promote their improved implementation. In addition, a number of delegations stated that further studies were

needed on ways to combat illegal, unreported and unregulated fishing. Several delegations also noted that although information and databases existed on high-seas fisheries (including those established under the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas), basic information was often missing with regard to the nature and extent of activities carried out beyond areas of national jurisdiction. Others noted that existing information was focused on individual sectors, such as scientific research and fisheries, and suggested that this information be gathered in a way that allowed scientific comparisons. A proposal was made for the establishment of an independent expert panel, as well as the development of a framework for regional fisheries management organizations, to improve data gathering and exchange. Other areas, such as bottom trawling, methods of improving port State control, market mechanisms and the impacts of shipping and accidents related thereto, including the trans-shipment of nuclear waste, were also proposed to be the focus of further studies.

46. A number of delegations stated that further work was needed on economic incentives, including market-based approaches. It was stated by one delegation that cost-benefit analyses should be conducted, with regard to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Studies were proposed on possible sanctions for States that violated existing international rules and allowed activities that were likely to harm the environment.

47. Delegations highlighted knowledge gaps and the need for further studies on the current range and nature of activities associated with the use of deep seabed resources, the nature and significance of the benefits generated, how widely the benefits were shared and whether the benefits supported the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Furthermore, there was a need to study the legal arrangements and modalities of operation of existing partnerships between scientific research institutions and the marine biotechnology industry, both public and private, and ways to broaden the participation of developing countries in such endeavours. The issue of intellectual property rights over deep seabed genetic resources also required further study, as well as clarification. There was a need to gather information on trends regarding the implementation of international obligations related to intellectual property rights, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization, in particular the manner in which patent requirements were being implemented in national legislation. Calls for other studies included the relationship between the legal framework of intellectual property rights and the Convention.

48. It was stressed that all proposed studies depended on securing funds to finance their undertaking.

Agenda item 5 (d)
Possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

49. In the interventions made under agenda item 5 (d), several delegations underlined how the discussions within the Working Group had shown the emergence of trends on ways to enhance cooperation and coordination for the conservation and

sustainable use of marine biological diversity in areas beyond national jurisdiction. While some proposals for options and areas for further cooperation and coordination were widely accepted, other proposals were identified as needing further discussion in order to address fundamental differences.

Implementation of existing instruments

50. In general, it was agreed that a key priority should be to improve the level of implementation of existing instruments, including the principles and tools available under those instruments to address the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (such as the precautionary approach and the ecosystem-based approach).

51. This required increased cooperation and coordination in the context of existing mechanisms and represented a possible short-term measure to enhance the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Existing agreements and mechanisms should be used to the greatest extent possible to achieve optimum conservation and management under existing sectoral mandates, which in some instances needed to be updated, strengthened and modernized. In the view of some delegations, the existing instruments already provided an adequate legal framework for tackling the challenges posed by the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In particular, they highlighted destructive fishing practices and illegal, unreported and unregulated fishing, which were identified in general as the major threats to biodiversity. In that regard, they also made a special reference to the important work done at the regional level, in the context of regional fisheries management organizations, and of the upcoming work of the General Assembly pursuant to resolutions 59/25 (paras. 66-71) and 60/31.

52. The improvement of flag State enforcement, as well as port State measures, was referred to in relation to the improved implementation of existing instruments. The need to increase the number of ratifications of existing instruments and to conduct an assessment of their performance was highlighted. At the same time, it was noted that improvement in the degree of implementation of existing agreements was largely sectoral in nature and therefore should be carried out in conjunction with an effort to improve cooperation and coordination among existing mechanisms.

Cooperation and coordination

53. The cross-cutting nature of marine biological diversity, as well as the existence of numerous, and often competing, legal frameworks and bodies, lead numerous delegations to stress the importance of improving coordination and cooperation among international organizations, as well as among sectors and regimes with varying competencies in areas beyond national jurisdiction. The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea was identified as a coordinating mechanism within the United Nations system with a key but as yet unrealized role in this respect. In addition, a greater degree of cooperation among States was called for, in conformity with the cooperation duties governed by the Convention in the conservation and management of living resources on the high seas, as well as in the protection and preservation of the marine environment. Delegations also underlined the need for greater coordination at the domestic level among agencies and ministries. The need for cooperation in the development of

liability rules, including strict liability for harm to vulnerable deep-sea ecosystems from various activities, was noted.

Integrated management approaches

54. While the need to improve sectoral governance was widely accepted, many delegations agreed that integrated management approaches were needed to bring current sectoral authorities and tools together. This would require compatibility of governance in marine areas within and outside national jurisdiction, a cooperative rather than competitive agenda and States acting uniformly in different international forums. In respect of integrated ocean management, the delegations highlighted the difficulty and need to have a collective understanding of the concept in order to develop and implement appropriate measures.

55. In the light of the fact that existing mechanisms in general provide only sectoral governance approaches and that there are no clear mechanisms or policies in place to foster cooperation and coordination for the conservation of certain sensitive marine ecosystems, the negotiation of an implementing agreement to the Convention was proposed as a medium to long-term measure. An implementing agreement could create the necessary legal framework for enhancing cooperation for the integrated conservation and management of marine biological diversity beyond areas of national jurisdiction, including through the establishment of networks of marine protected areas based on scientific evidence. Such an agreement might help overcome the fragmentation and sectoral nature of the current international regulatory framework, providing for the possibility, for instance, for cumulative impact assessments across different sectors. It would need to be in conformity with the Convention and international law. In relation to the proposal, other delegations recognized that the adoption of any new legal instrument would not necessarily stop the rate of loss of marine biological diversity. In addition, some delegations fundamentally disagreed with the need to adopt a new instrument and warned about the complex and time-consuming nature of any negotiation of new legal instruments, as opposed to improvement in the implementation of existing instruments.

56. A view was expressed to the effect that some aspects of the issue of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction could be dealt with in the context of the Convention on Biological Diversity.

57. In the view of some delegations, the short-term and long-term approaches were not mutually exclusive. Improved implementation of existing instruments represented a short-term goal that could be achieved, for instance, through the adoption of measures aimed at reducing destructive fishing practices and protecting marine biodiversity, in particular, vulnerable ecosystems, or through such other tools as the establishment of marine protected areas or particularly sensitive sea areas. The short-term goal could then be complemented with a longer-term objective to develop new measures and regulations.

58. Representatives of non-governmental organizations stressed the need for the development of a new ocean governance regime for areas beyond national jurisdiction, which would account for all sectors and uses of the oceans on an equal footing and in an integrated manner and would take into account the biological interactions between the living resources of the seabed and those of the water

column. It was argued that the regime should be based on the ecosystem approach, the precautionary principle, sustainability and equity, and remain adaptable to allow for new and emerging threats to marine biodiversity in areas beyond national jurisdiction, such as bioprospecting. They also stressed the need for a global network of marine protected areas, including both strictly protected areas and multi-use areas. Support was expressed for a new implementing agreement to the United Nations Convention on the Law of the Sea to develop a new governance and management regime on the basis of the existing international framework. One observer noted the need to address systemic issues, in particular that of flag State jurisdiction and control on activities undertaken in areas beyond national jurisdiction in order to address illegal, unreported and unregulated fishing and flags of convenience, and proposed the appointment by the Secretary-General of a special representative for the oceans to provide for consensus-building in support of the work related to the issue.

Area-based management measures, including representative networks of marine protected areas

59. The establishments of area-based management measures, including representative networks of marine protected areas and temporal and spatial closures for fisheries management, consistent with international law and based on scientific information, was identified by most delegations as a key tool to improve integrated conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

60. In this context, it was noted that further cooperation was necessary to further develop criteria for the identification of ecologically and biologically significant areas, the development of systems of marine protected areas and biogeographic classification systems. Further consideration should also be given to ways of establishing, managing and enforcing such designations, recognizing in this context the existing role and mandate of such bodies as FAO, IMO and the Convention on Biological Diversity and of regional seas conventions. It was proposed that the General Assembly could assume a leading role in the identification of criteria for the establishment of marine protected areas, and that such underutilized bodies as the Meeting of States Parties of the Convention could be considered for this purpose. A presentation was given on the experience of the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic regarding the identification and establishment of marine protected areas beyond areas of national jurisdiction.

61. A number of delegations stated that multi-purpose marine protected areas would be a key tool in the future to manage biodiversity beyond areas of national jurisdiction and noted that an implementing agreement to the Convention could create a new regulatory and governance regime for their establishment and management. Such a regime would be based on the principles of ecosystem management and precaution, including imposing prior environmental impact assessments and placing the burden of proof for harm on the users. Other delegations supported the establishment of marine protected areas within existing regulatory regimes.

62. Other delegations considered high-seas marine protected areas as a possible tool, though not a necessary one, for obtaining a multisectoral approach and

indicated that the establishment of marine protected areas should focus on the type of marine resource and the type of activity threatening it. In their view, there should be a strong causal link between the impacts being addressed and the management measures proposed, consistent with customary international law, as reflected in the Convention.

Marine scientific research

63. Delegations agreed that marine scientific research played a fundamental role with regard to marine biological diversity and they focused their statements on several aspects relating to cooperation and coordination in this field. One of the areas of growing agreement within the Working Group was the need to promote cooperation and coordination for both multi-purpose and specific marine scientific research to improve the understanding of marine biological diversity and therefore facilitate better informed policy and decision-making. A more direct connection between increased scientific knowledge and the policy debate on marine biodiversity conservation and management was called for.

64. In order to increase the common benefits derived from marine scientific research and the degree of cooperation in this regard, proposals were made, including the creation of a network of ocean observatories, the systemization of knowledge and the establishment of easily accessible standardized data management and archiving systems.

65. An area identified as needing further international cooperation related to the status of marine scientific research addressing biological diversity beyond areas of national jurisdiction, in particular in the deep seabed. Delegations held very different views in this regard. Some delegations stressed that freedom of scientific research is a prerequisite for discovering what the oceans may offer and that research should therefore not be subjected to a burdensome regulatory regime. Other delegations reiterated that scientific research in the deep sea beyond areas of national jurisdiction is regulated by the provisions dealing with marine scientific research in the Area under parts XI and XIII of the Convention.

66. Several delegations suggested that, in order to ensure that the conduct of marine scientific research does not constitute a threat to marine biological diversity, marine researchers could themselves adopt codes of conduct to regulate their activities. Others preferred the establishment of internationally agreed codes of conduct, such as an international code of conduct for responsible marine scientific research, based on the model of the FAO Code of Conduct for Responsible Fisheries.

67. The representative of UNESCO highlighted the work of UNESCO and its Intergovernmental Oceanographic Commission, in particular to promote international scientific cooperation and provide a platform for developing and implementing cooperative programmes on marine science and capacity-building. Noting that UNESCO cooperates with other organizations and bodies of the United Nations system, multilateral environmental agreements and non-governmental organizations in carrying out its work, he stated that key areas of work for UNESCO with regard to marine biodiversity beyond areas of national jurisdiction included international scientific cooperation, scientific monitoring and the Global Observing System, scientific information and the science of marine protected areas. It was noted that UNESCO had also cooperated with the United Nations University to

produce studies on issues related to marine biodiversity, as well as with the Global Forum on Oceans, Coasts and Islands to host the Third Global Conference on Oceans, Coasts and Islands, which had also addressed issues relating to marine biological diversity beyond areas of national jurisdiction.

Capacity-building and the transfer of marine technology

68. Several delegations advocated the need to encourage capacity-building programmes, the sharing of data and information and the transfer of relevant technologies. Greater international cooperation in these areas, in accordance with the relevant provisions of the Convention, was advocated by most delegations. Developed States and relevant international organizations and financial institutions were invited to support the capacity-building of developing countries in deep-sea scientific research through bilateral, regional or global cooperation programmes and technical partnerships. Some delegations advocated the training and/or direct participation of scientists from developing countries in research projects on biodiversity. Some delegations stated that a trust fund to facilitate that activity should be established. The compilation of a list of relevant experts from developing countries was also recommended. Programmes aimed at building the scientific capacity of some developing States in this area were described.

69. The need to increase wider and more effective participation of developing countries, including small island developing States, in global ocean management was also highlighted. It was stressed that this should be done in a way that takes into account the concerns of developing countries, in particular in the process of formulating relevant standards or criteria.

70. The transfer of marine science and marine technology to developing States on fair and reasonable terms and conditions, in accordance with the Convention, was also identified by several delegations as an important element in the discussion.

Genetic resources

71. Several delegations reiterated their understanding that the marine genetic resources beyond areas of national jurisdiction constituted the common heritage of mankind and recalled article 140 of the Convention, which provides that the activities in the Area shall be carried out for the benefit of mankind and that particular consideration shall be given to the interests and needs of developing States, including the need for these resources to be used for the benefit of present generations and to be preserved for future generations. The provisions under article 145 of the Convention, regarding the protection of the marine environment in the Area, were also recalled. Several delegations suggested that urgent cooperation was needed to consider a new or improved legal and/or institutional mechanism in this regard and to develop options and approaches to address genetic resources in the Area, in particular current and possible modalities for access to them and sharing of benefits arising from their use. A number of delegations also mentioned that the International Seabed Authority constituted an existing mechanism in this area and that consideration should accordingly be given to the possibility of broadening its mandate. One delegation stated that the Working Group should not focus on the definition of the legal regime applicable to the genetic resources of the seabed but on the drafting of norms regarding the access and the distribution of benefits derived

from their exploitation and for the conservation of biodiversity in the context of its exploitation.

72. Other delegations reiterated that any measures that may be taken in relation to genetic resources in areas beyond national jurisdiction must be consistent with international law, including freedom of navigation. In their view, these resources were covered by the regime of freedom of the high seas, which provided the legal framework for all activities relating to them, in particular marine scientific research. These delegations did not agree that there was a need for a new regime to address the exploitation of marine genetic resources in areas beyond national jurisdiction or to expand the mandate of the International Seabed Authority.

73. Some delegations affirmed the need to better understand this issue before developing legal, policy and institutional options. In addition, they indicated the need to encourage compliance with existing obligations, in particular in relation to marine scientific research and the protection of the marine environment. It was suggested that the issue could be addressed, taking into account the legitimate interests of all States, through the development of guidelines, codes of conduct, including internationally agreed codes of conduct, and impact assessments.

Agenda item 6
Other matters

74. On the last day of the meeting, the Co-Chairpersons submitted to the Working Group a summary of trends (see annex I), which represented their general understanding of the issues, possible options and approaches. The Co-Chairpersons emphasized that the summary of trends should be read in conjunction with the summary of discussions of the Working Group, which would provide a more elaborate summary of the various positions expressed at the meeting. The summary of trends was not intended to be exhaustive or to prejudice national positions and future discussion of the issues, and did not necessarily reflect each and every delegation's particular position.

75. Delegations in general acknowledged that the summary of trends represented the Co-Chairpersons understanding of the issues. It was therefore understood that the language was not open to negotiation by the Working Group.

76. Several delegations made statements on the summary of trends prepared by the Co-Chairpersons. While the summary in general was described as representing a useful reflection of the outcomes of the meeting, some delegations pointed out that certain paragraphs did not accurately reflect, in their view, a general understanding of the issues. Some of the paragraphs were described as being inaccurate or incomplete and some issues were lacking the necessary emphasis. It was therefore proposed that some paragraphs be deleted.

77. The list of studies (see annex II) was welcomed as a useful indication of areas where further work was needed. It was noted that it was, on the one hand, too extensive to be of practical guidance for the determination of areas that required further examination in the future and, on the other hand, that it contained studies that had already been conducted or were under way. As a consequence, a suggestion was made to delete the list. It was also clarified that the completion of the studies listed was not a condition for the undertaking of future actions on biodiversity.

78. In their closing statements, delegations in general expressed appreciation for the work carried out during the meeting, acknowledging that it had often exceeded their expectations. Delegations in general agreed that the work initiated by the Working Group should continue on the basis of a cooperative but more focused agenda, through an ongoing process of discussions under the auspices of the General Assembly. The Assembly would decide on any relevant course of action at its sixty-first session.

79. The summary of trends, which reflected the Co-Chairpersons understanding of issues discussed during the meeting, could be refined on the basis of the discussion that was held on the last day of the Working Group meeting. Any further elaboration should be carried out in the context of future discussions on the subject.

Annex I

Summary of trends prepared by the Co-Chairpersons

1. The trends that are summarized herein are the Co-Chairpersons general understanding of the issues, possible options and approaches that emerged from the meeting of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction and should be read in conjunction with the summary of discussions of the Working Group. The trends are not exhaustive, are not intended to prejudice national positions and future discussion of the issues and may not necessarily reflect each and every delegation's particular position.

2. It was reaffirmed that the General Assembly, as the global institution that has the competence to conduct reviews of issues relating to oceans and the law of the sea, has a central role in addressing issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Other organizations, processes and agreements also have an essential complementary role within areas of their respective competence and can and should contribute to an integrated consideration of these issues by the Assembly.

3. The United Nations Convention on the Law of the Sea sets out the legal framework within which all activities in the oceans and seas must be carried out, and any action relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction should be consistent with its legal regime. A number of other conventions and instruments complement the Convention and together provide the current framework for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

4. The Convention and other relevant legal instruments need to be more effectively implemented, including through capacity-building in developing States.

5. The conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction should be based on the precautionary and ecosystem approaches using the best available science, and prior environmental impact assessments.

6. It is important to improve the management of sectoral activities that have an impact on marine biological diversity beyond areas of national jurisdiction, including by strengthening the relevant sectoral and regional organizations and mechanisms for their accountability.

7. Destructive fishing practices, identified as one of the major threats, should be addressed on an urgent basis in the relevant forums, including the General Assembly, the Food and Agriculture Organization of the United Nations (FAO) and regional fisheries management organizations (both existing and developing). The Assembly will consider this issue at its sixty-first session in accordance with its resolutions 59/25 and 60/31. It is important that States and regional fisheries management organizations provide necessary and sufficient information on relevant actions taken for inclusion in the report that the Assembly requested the Secretary-General to prepare in cooperation with FAO.

8. Illegal, unreported and unregulated fishing remains a major impediment to conservation and sustainable use of marine biological diversity. It is essential to

have an accelerated and integrated approach across all relevant forums to address such issues as flag State responsibilities, port State measures, compliance and enforcement.

9. It was acknowledged that under the Convention a coastal State had the right to regulate the activities that had negative impacts on the sedentary species of its continental shelf and the right to adopt the necessary measures, including restrictive measures, to protect those resources.

10. Area-based management tools such as marine protected areas, including representative networks, and temporal and spatial closures for fisheries management are widely accepted. Further elaboration of criteria for identification, establishment and management is required.

11. There is a need to study and determine whether there is a governance gap in marine areas beyond national jurisdiction. If such a gap is identified, there is a need to clarify how it should be addressed, including assessing the need for the development of an implementing agreement under the Convention to address, inter alia, the establishment and regulation of multi-purpose marine protected areas on a scientific basis, as well as other related issues.

12. In this context, further discussion on the legal status of marine biological diversity, including genetic resources beyond national jurisdiction, is needed in order to clarify how such resources may have to be regulated, whether existing tools and arrangements are sufficient or whether new tools are required for their conservation and sustainable use, including consideration of access and benefit sharing. The symbiotic relationship between the genetic resources of the deep seabed, the biological diversity of the deep sea water column and the non-living resources beyond national jurisdiction was also noted and needs to be further clarified. Any further discussion on this issue should take into account the legitimate interests of all States and could also address the development of codes of conduct, including an international code of conduct for responsible marine scientific research, guidelines and impact assessments.

13. Given the range of forums and sectoral interests dealing with issues related to the conservation and management of marine biological diversity beyond areas of national jurisdiction at national, regional and global levels, there is a need to enhance coordination and cooperation within and among States and within and among relevant organizations and bodies of the United Nations system and other relevant intergovernmental organizations.

14. The international community needs to improve the sharing among States of knowledge from research programmes, including the availability and maintenance of data, samples and research findings, and ways to facilitate greater participation of scientists from developing countries in such research. The International Seabed Authority, among others, has an important role in this regard.

15. There is a corresponding need also for the increased transfer of marine science and marine technology to developing States on fair and reasonable terms and conditions.

16. A need for further study on the following issues emerged: (a) improved understanding of the extent and nature of marine biological diversity and anthropogenic impacts beyond areas of national jurisdiction, in particular in the

areas of greatest vulnerability; (b) further research to assist in the development of management options, including economic incentives and area-based management; (c) improved understanding of the economic and socio-economic aspects; and (d) related legal and institutional issues.

17. It was noted that while scientific knowledge is limited, nonetheless there is currently sufficient evidence of impacts, in particular in relation to seamounts and cold water coral reef ecosystems.

18. Marine scientific research, including research addressing genetic resources, should be conducted in conformity with the Convention. In particular, scientific information and knowledge should be published and disseminated and marine scientific research in the Area must be carried out for the benefit of mankind as a whole (articles 143 and 244 of the Convention).

19. While much of the concern related to the conservation and sustainable use of marine biological diversity is related to national jurisdictions, the conservation and management of areas beyond national jurisdiction has emerged as a major issue that requires urgent attention and action.

20. There is wide support for continuing the ongoing process of discussions under the auspices of the General Assembly and for the need to have a focused agenda that cuts across all relevant forums. It was recognized that the General Assembly would decide on a relevant course of action at its sixty-first session.

Annex II

List of specific studies referred to in the discussions of the Working Group

The list of studies suggested by delegations includes:

(a) Biological diversity and environment conditions of the bathypelagic zone, the trenches and the seamounts; and mapping of cold-water coral ecosystems associated with seamounts;

(b) Environmental impacts of anthropogenic activities, including illegal, unreported and unregulated fishing, bottom trawling, shipping, noise pollution and marine scientific research, as well as actions taken to address these impacts by various actors, including States and researchers;

(c) Impacts of climate change on marine biological diversity in the high seas and the deep seabed;

(d) Long-term time-series studies of marine biological diversity beyond areas of national jurisdiction to evaluate natural variability and understand the resilience of deep-sea ecosystems to the impacts of anthropogenic stresses;

(e) Policy-relevant scientific assessment of existing available information to inform decision-making;

(f) Number of vessels fishing on the high seas and detailed catch records by area and species;

(g) Available management tools for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, including multiple-use marine protected areas;

(h) What has been done and further work to be done, in particular in relation to the criteria for the identification of potential marine protected areas in areas beyond national jurisdiction and for the development of systems of marine protected areas, and on biogeographic classification systems. Further consideration should also be given to how to establish, manage and enforce such designations;

(i) Economic aspects of various activities, including illegal, unreported and unregulated fishing and exploitation of deep seabed genetic resources;

(j) Economic assessment techniques for both restoration and non-use values;

(k) Economic incentives, including market-based incentives, and disincentives for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;

(l) Nature and level of interests in marine biological diversity beyond areas of national jurisdiction, in particular commercial interest in genetic resources from the deep sea;

(m) Socio-economic value of marine biological diversity beyond areas of national jurisdiction;

(n) Reasons for which some legal instruments are not widely ratified and/or implemented;

(o) Existing legal framework to identify principles relevant to the conservation and sustainable use of marine biological diversity, including the genetic resources of the international seabed area;

(p) Options for developing legal mechanisms for benefit sharing, which include non-monetary benefits, including the need for international cooperation in marine scientific research through the exchange, sharing and dissemination of information on research programmes, objectives and results, as well as cooperation in the transfer of technology;

(q) Study of the legal arrangements and modalities of operation of existing partnerships of scientific research institutions with the marine biotechnology industry, both public and private and ways to broaden participation in such partnerships so as to involve developing countries;

(r) Regimes or applicability of intellectual property rights and the use of genetic resources in areas beyond national jurisdiction;

(s) Trends in the implementation of international obligations regarding intellectual property rights, such as the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights, in particular the manner in which the patent requirements are being implemented in national legislations;

(t) Clarification of the relationship between the legal framework of intellectual property rights and the Convention;

(u) Level of dissemination of the results of scientific research;

(v) Addressing gaps in science and technological capacity in developing countries, including through the use of questionnaires;

(w) Knowledge gaps, not included in the list above, which were highlighted at the first meeting of the Ad Hoc Working Group on Protected Areas of the Convention on Biological Diversity (recommendation 1/1, paragraph 4 (h)), including:

(i) Distribution of all marine species on the Red List of threatened species of the International Union for the Conservation of Nature and Natural Resources;

(ii) Information on the distribution of seamounts and cold-water coral reefs, their ecosystem functioning and the ecology of associated species, from a range of different depths, in particular from poorly sampled areas;

(iii) Information on the distribution of other habitats (for list, see UNEP/CBD/WG-PA/1/2, annex I, table 1) and the ecology of associated species;

(iv) Studies of the ecology of marine species and their behaviours that determines their vulnerability to human activities (for list, see UNEP/CBD/WG-PA/1/2, annex I, tables 2 and 3).

Annex III

Letter dated 20 January 2006 from the Co-Chairpersons of the Working Group to the Permanent Representatives of the States Members of the United Nations

We have the honour to refer to the letter of 6 January 2006 from the Ambassador/Chief of Cabinet, Office of the President of the General Assembly, to the Chairpersons of the Regional Groups in which, pursuant to paragraph 80 of General Assembly resolution 60/30, he informed delegations of our appointment as Co-Chairpersons of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (the Working Group). The Working Group is scheduled to meet at United Nations Headquarters from 13 to 17 February 2006 (Conference Room 1, 10 a.m.-1 p.m. and 3-6 p.m.).

Taking into consideration paragraph 73 of General Assembly resolution 59/24, which established the Working Group, and bearing in mind the report of the Secretary-General relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (A/60/63/Add.1), prepared and released in response to the request in paragraph 74 of resolution 59/24, we have elaborated a format (see appendix I), a provisional agenda (see appendix II) and a proposed organization of work (see http://www.un.org/Depts/los/index.htm) for the meeting of the Working Group.

The meeting will be invited to consider the format and the provisional agenda and as appropriate proceed with their adoption.

We wish to draw your attention to paragraph 75 of resolution 59/24, in which the General Assembly encourages States to include relevant experts in their delegations attending the meeting of the Working Group.

To facilitate the discussions at the meeting, the Division for Ocean Affairs and the Law of the Sea will establish a list of speakers. Participants wishing to make statements (general and/or specific under each agenda item) are invited to inform the Division accordingly, prior to the meeting. Such requests should be sent to the Division by fax (212-963-5847), or by e-mail (hicuburundi@un.org; germani@un.org).

(*Signed*) Juan Manuel **Gómez-Robledo**
Ambassador
Deputy Permanent Representative of Mexico to the United Nations

(*Signed*) Philip D. **Burgess**
Manager International
Department of the Environment and Heritage of Australia

Appendix I

Format

1. Pursuant to General Assembly resolution 60/30, two co-chairpersons were appointed by the President of the General Assembly, in consultation with Member States and taking into account the need for representation from developed and developing countries, to coordinate the meeting of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The Co-Chairpersons elaborated a format for the discussions of the Working Group that best facilitates its work, in accordance with the rules of procedure and practices of the General Assembly.

Programme of work

2. The meeting of the Working Group will work through plenary sessions, which will be open to participation by all identified by the General Assembly in paragraph 79 of resolution 60/30. In conformity with that resolution, the meeting may be conducted in closed sessions, as appropriate, in accordance with the relevant rules of procedure applicable to the meeting of the Working Group.

Agenda

3. The Co-Chairpersons will propose to the meeting of the Working Group a draft agenda setting out a proposed programme of work for the meeting. The meeting will consider such proposals and adopt its agenda accordingly.

4. The draft agenda is based on paragraph 73 of General Assembly resolution 59/24, in which the Assembly decided that the Working Group will study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In particular the Working Group will:

(a) Survey the past and present activities of the United Nations and other relevant international organizations, with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;

(b) Examine the scientific, technical, economic, legal, environmental, socio-economic and other aspects of these issues;

(c) Identify key issues and questions where more detailed background studies would facilitate consideration by States of these issues;

(d) Indicate, where appropriate, possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

5. The outcomes of the meeting will consist of:

(a) A summary of trends, under each agenda item, that emerged in the course of the meeting;

(b) A report by the Co-Chairpersons of issues and ideas raised during the meeting, to be made available to the General Assembly, in accordance with paragraph 76 of resolution 59/24.

6. An advance and unedited version of the report, in English only, will be posted on the website of the Division for Ocean Affairs and the Law of the Sea, at http://www.un.org/Depts/los, within one week of the end of the meeting.

7. The report by the Co-Chairpersons will be made available at the sixty-first session of the General Assembly, in the form of an addendum to the report of the Secretary-General on oceans and the law of the sea.

8. The report to be made available to the General Assembly may identify key issues and questions where more detailed background studies would facilitate consideration by States of issues relating to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

9. The report may also identify issues that require further attention from a policy perspective, including possible options and approaches to promote international cooperation and coordination.

10. In that regard, it should be noted that the report of the Secretary-General (A/60/63/Add.1), requested by the General Assembly in paragraph 74 of its resolution 59/24, also highlighted key issues and questions requiring further consideration and more detailed background studies, as well as possible options and approaches for the promotion of cooperation and coordination in the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

Appendix II

Provisional agenda

1. Opening of the Working Group.
2. Adoption of the agenda.
3. Organization of work.
4. General exchange of views.
5. Consideration of issues identified in General Assembly resolution 59/24, paragraph 73:
   (a) Past and present activities of the United Nations and other relevant international organizations, with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
   (b) Scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
   (c) Key issues and questions where more detailed background studies would facilitate consideration by States of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
   (d) Possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.
6. Other matters.